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**OFFICE OF PETITIONS**

In re Application of :  
C. Martin Smith and Ted J. Brackett :  
Application No. 10/731,364 : DECISION ON PETITION  
Filed: December 9, 2003 :  
Attorney Docket No. 02-11429 :

This is in response to the "Request for Correction of First Named Inventor," filed July 19, 2005, which is being treated as a petition under 37 CFR 1.181 requesting that the Office correct its error in the order of the named inventors.

The petition is dismissed.

Applicants state that the Office incorrectly listed the first named inventor as C. Martin Smith and Ted J. Brackett as the second named inventor, when, in fact, Ted J. Brackett is the first named inventor and C. Martin Smith is the second named inventor. Therefore, applicants request that the Office correct its record to show the correct order of inventorship.

A review of the Combined Declaration and Power of Attorneys filed in this application discloses that two executed declarations were filed: one naming as sole inventor C. Martin Smith and the other naming Ted J. Brackett as the sole inventor. Neither declaration sets forth the fact that Smith and Brackett are joint inventors in this application.

37 CFR 1.63(a)(2) states:

(a) An oath or declaration filed under § 1.51(b)(2) as a part of a nonprovisional application must:

\* \* \* \* \*

(2) Identify each inventor by full name, including the family name, and at least one given name without abbreviation together with any other given name or initial \* \* \*.

Applicants' attention is further directed to MPEP 602, which states in relevant part:

37 CFR 1.63 no longer requires the oath or declaration to state that the inventor is a sole or joint inventor of the invention claimed. When joint inventors execute separate oaths or declarations, each oath or declaration should make reference to the fact that the affiant is a joint inventor together with each of the other inventors indicating them by name. This may be done by stating that he or she does verily believe himself or herself to be the original, first and joint inventor together with "A" or "A & B, etc." as the facts may be.

The two executed declarations received do not comply with the provisions of 37 CFR 1.63, since each declaration does not reference the fact that Smith is an inventor together with inventor Brackett and indicating the name of the other inventor. Therefore, as the declarations are defective, they are not acceptable.

Accordingly, applicant is given a period of two (2) months within which to file an executed oath or declaration which sets forth the names of each inventor in compliance with 37 CFR 1.63(a)(2). This period is extendable under the provisions of 37 CFR 1.136(a). Failure to timely reply will result in the abandonment of the application.

It is noted that the issue fee has been paid. However, since the declarations filed in this case are defective, the application is not in condition for issuance. Accordingly, this application will be withdrawn from issue until the above matter is resolved.

Additionally, as applicants submitted two separately executed declarations, the Office took the order of the names of the inventors in the order that the declarations were placed in the file. Therefore, as no error occurred on the part of the Office in the listing of the order of the names of the inventors, a petition under 37 CFR 1.182 and \$400 fee therefor must now be submitted to correct applicants' error in not supplying properly executed declarations setting forth the named inventors and in the order desired.


Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions